



REISSUE LITIGATION, GROUP ART UNIT 1615

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Reissue Application of)

FOR: PREPARATION AND
TRANSFER SHEET

Patentee: RODERICK THOMPSON)

Serial No.: 09/014,518)

Group
Art Unit: 1615

Filed: January 28, 1998)

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MAY 18 1998

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. §§ 1.97 and 1.98

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Box 7
Assistant Commissioner for Patents
Washington, D.C. 20231

Attention: Examiner

Dear Sir:

New information relating to a reference already of record in the above-identified reissue application has been recently discovered as a result of the discovery process in the concurrent litigation. Samples of the Counter Maid product described and illustrated in the "Counter Maid Product Brochure" reference have been obtained and examined by Applicant's undersigned attorneys. It has been discovered that the samples are made of a translucent plastic sheet 15 inches in length by 11 inches in width, and about 8.0-8.5 mils in thickness. (Thickness appears to vary within about +/- one-half mil over the surface of some sheets and between various samples that have been measured, perhaps due to manufacturing tolerances.) It has also been discovered that the Counter Maid mat can,

if held very carefully by a user in the flexed or cantilever state, support a weight of five ounces at a distance of 10 inches from the end at which it is held. Nevertheless, if the mat is waved or bounced even slightly in a vertical direction while supporting such a weight, such as would occur if a user were to transfer five ounces of food with the mat by walking in a normal manner from one location to another in a kitchen, it tends to buckle or collapse. These samples of the Counter Maid mat also appear to lay relatively flat on a table or countertop. Nevertheless, they are believed to have been stored in a stacked state for many years, such that the samples may have been subjected to pressure that could permanently have removed any memory or tendency to curl.

Also submitted herewith is a copy of a decision dated April 23, 1998 on claim interpretation issued by United States District Judge Napoleon A. Jones, Jr. of the Southern District of California in the concurrent litigation, Case No. 96-2129-J (CGA), captioned NEW AGE PRODUCTS, INC. V. PROGRESSIVE INTERNATIONAL CORP. In this decision, the Court has held that the claims of U.S. Patent No. 5,472,790 (the patent in reissue) do not read on "a simple plain sheet of plastic" and are limited in scope to "a sheet of plastic used as a cutting and transferring board for food" The Court's decision settled the issue in the litigation of whether the preambles of the claims reflect a mere "statement of intended use" or constitute an actual limitation upon the scope of the claims. The Court's decision also settled the issue in litigation of whether the claims include an implicit upper limit on the dimensions of the article, such that they would not

read on large industrial-size sheets. In that regard, the Court held that the article as claimed is limited to a flexible food cutting and transferring board having a maximum length of 15 inches and a maximum width of 11 inches. In view of the Court's decision, it is respectfully submitted that the claims pending in the above-referenced reissue application are not anticipated by any of the prior art references of record that do not disclose flexible food cutting and handling mats.

Respectfully submitted,

Dated: May 8, 1998

By: 

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Docket No.: 5355-RE02